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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-814]

Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 11, 2015, the United States Court of International Trade (CIT or Court) issued final judgment in *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, affirming the Department of Commerce's (the Department) final results of redetermination pursuant to remand.

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination in the less than fair value investigation on utility scale wind towers from the Socialist Republic of Vietnam, and is amending the final determination with respect to the CS Wind Group.¹

DATES: Effective Date: May 21, 2015.

¹ The CS Wind Group consists of CS Wind Vietnam Co., Ltd. and CS Wind Corporation.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0167.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2013, the Department published its amended final determination and antidumping duty order in this proceeding.² The CS Wind Group appealed the *Wind Towers Final Determination* to the CIT, and on March 27, 2014, the CIT remanded the *Wind Towers Final Determination* to the Department to require the Department to: 1) reconsider its valuation of steel plate, 2) reconsider its valuation of carbon dioxide, 3) reconsider the calculation of overhead expenses for surrogate financial ratios, specifically the treatment of jobwork charges and income line items, 4) re-determine the appropriate adjustment to the CS Wind Group's U.S. sales prices to account for a discrepancy in the reported weights of wind towers, and 5) reconsider its calculation of brokerage and handling expenses.³ On July 29, 2014, the Department filed its results of redetermination pursuant to remand in accordance with the CIT's order.⁴

On November 3, 2014, the CIT affirmed, in part, the Department's *Final First Redetermination*, which resulted in a weighted-average dumping margin of 17.02 percent for the CS Wind Group.⁵ The Court remanded the *Final First Redetermination* to require the

² See *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), as amended by *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 11150 (February 15, 2013) (*Wind Towers Final Determination*).

³ See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, 971 F. Supp. 2d 1271 (CIT 2014).

⁴ See *Final Results of Redetermination Pursuant to Court Order, CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 14-33, dated July 29, 2014 (*Final First Redetermination*).

⁵ See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op.

Department to reconsider its treatment of jobwork charges and income line items in calculating overhead expenses for surrogate financial ratios.⁶ In the *Final Second Redetermination*, the Department revised its calculation of certain surrogate financial ratios.⁷ The Court affirmed the Department's second remand in its entirety on May 11, 2015, and entered judgment.⁸

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's May 11, 2015, judgment affirming the *Final Second Remand* constitutes a final decision of that court that is not in harmony with the *Wind Towers Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court decision with respect to this litigation, the Department is amending the *Wind Towers Final Determination* with respect to the CS Wind Group's dumping margin and cash deposit rate. The revised dumping margin and cash deposit rate for the CS Wind Group is 17.02 percent.⁹

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

14-128 (CIT November 3, 2014).

⁶ *Id.*

⁷ See Final Redetermination Pursuant to Court Order, *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 14-128, dated January 21, 2015 (*Final Second Redetermination*).

⁸ See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 15-45 (CIT May 11, 2015).

⁹ See *Final Second Redetermination*.

Cash Deposit Requirements

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection to collect a cash deposit of 17.02 percent for entries of subject merchandise produced and exported by the CS Wind Group, effective May 21, 2015.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1), 735(d), 736(a) and 777(i)(1) of the Act.

Dated: May 18, 2015.

Paul Piquado,
Assistant Secretary for Enforcement and Compliance.

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